

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WILLIAM S. KARN,)
)
)
Plaintiff,)
)
)
v.) 02: 10-cv-0424
)
)
CLAYTON S. MORROW,)
PROTHONOTARY, and)
BOROUGH OF BEN AVON,)
)
)
Defendants.)

ORDER OF COURT

Presently pending before the Court is the MOTION FOR ENTRY OF DEFAULT JUDGMENT filed by Plaintiff, William S. Karn (Document No. 11). For the following reasons, the Motion is **DENIED**.

First, the Motion as filed is premature. Before a party can seek a default judgment by the Court, the party must first have the Clerk of Courts enter a default. Fed. R. Civ. P. 55(a). The request for default must be accompanied by an affidavit “or otherwise,” which reflects that the party against whom “a judgment for affirmative relief is sought has failed to plead or otherwise defend.” *Id.* After a default has been entered, a party may then have a default judgment entered either by (i) the Clerk of Courts if the plaintiff’s claim is for a sum certain or a sum that can be made certain by computation, or (ii) in all other cases by the Court. *See* Fed.R.Civ.P. 55(b).

Second, the Motion is moot. In a Memorandum Opinion and Order filed simultaneously herewith, the Court has granted the Motion to Dismiss filed by the Borough of Ben Avon and this case has been dismissed in its entirety with prejudice.

So **ORDERED** this 24th day of June, 2010.

BY THE COURT:

s/Terrence F. McVerry
United States District Court Judge

cc: William S. Karn
664 Lincoln Avenue
Bellevue, PA 15202-3420
via United States Mail, and Certified Mail,
Return Receipt Requested

Clayton S. Morrow, Esquire
Morrow & Kross
Email: cmorrow@allconsumerlaw.com

Deborah A. Kane, Esquire
Weber Gallagher Simpson Stapleton Fires & Newby
Email: dkane@wglaw.com